

**STATE OF MONTANA**  
**JOHN MORRISON**  
**State Auditor and Commissioner of Insurance**  
**840 Helena Ave.**  
**Helena, MT 59601**

**REQUIREMENTS FOR SURPLUS LINES INSURERS**

In order to become eligible to write Surplus Lines business in Montana, you must comply with the following general requirements. Note that requirements differ for foreign and alien insurers.

FOREIGN OR ALIEN INSURERS must appear on the Commissioner's most recent list of eligible surplus lines insurers before they can begin writing any business in the state of Montana. The list is revised in the months of May and November.

**FOREIGN INSURERS**

1. Confirm appointment of the Commissioner of the state of Montana as insurer's attorney to receive service of process and designate the name and address of the person to whom process against the insurer, served upon the Commissioner of Insurance, is to be forwarded (SURLINES.SP).
2. Submit a current certificate from the Commissioner of Insurance in the insurer's domicile state showing the insurer is authorized to transact the kinds of insurance proposed to be transacted in the state of Montana.
3. Maintain capital and surplus or its equivalent under the laws of its state of domicile of no less than \$10 million.
4. Provide the Commissioner of the state of Montana a 9 x 14 inch copy of its current Annual Statement and a copy of the insurer's most recent Quarterly Statement. Statements in other sizes are not acceptable.
5. Provide the Commissioner with a description of the products the insurer plans to sell in Montana and provide the Commissioner with a detailed description of the insurer's proposed market plan.

NOTE: All surplus lines business **MUST** be written through a Montana Insurance Department authorized Surplus Lines Producer. (See Section 33-2-306, MCA.) Any resident or nonresident property/casualty producer licensed for five (5) years may apply for a Surplus Lines Producer License. Contact the Agent Licensing Bureau to obtain the applicable forms.

(Continued)

## **ALIEN INSURERS**

1. Confirm appointment of the Commissioner of the state of Montana as insurer's attorney to receive service of process and designate the name and address of the person to whom process against the insurer, served upon the Commissioner of Insurance, is to be forwarded (SURLINES.SP).
2. Insurer's name must appear on the NAIC's most recent quarterly "Financial Review of Alien Insurers" list.
3. Provide the Commissioner of the state of Montana with a copy of the insurer's most recent Annual Financial Report.
4. Provide the Commissioner with a description of the products the insurer plans to sell in Montana and provide the Commissioner with a detailed description of the insurer's proposed market plan.

NOTE: All surplus lines business **MUST** be written through a Montana Insurance Department authorized Surplus Lines Producer. (See Section 33-2-306, MCA.) Any resident or nonresident property/casualty producer licensed for five (5) years may apply for a Surplus Lines Producer License. Contact the Agent Licensing Bureau to obtain the applicable forms.

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**FOREIGN INSURER SURPLUS LINES ELIGIBILITY APPLICATION**

APPLICANT COMPANY'S NAME \_\_\_\_\_

HOME OFFICE ADDRESS \_\_\_\_\_  
(Street or PO Box)

\_\_\_\_\_  
(City) (State) (Zip) (NAIC Number)

MAILING ADDRESS \_\_\_\_\_  
(Street or P.O. Box)

\_\_\_\_\_  
(City) (State) (Zip)

Name and Phone Number of Contact Person \_\_\_\_\_

DATE INCORPORATED \_\_\_\_\_ STATE OF DOMICILE \_\_\_\_\_

ARE YOU A SUBSIDIARY? YES \_\_\_\_\_ NO \_\_\_\_\_  
If yes, list ultimate parent company. \_\_\_\_\_

ARE YOU A PARENT COMPANY? YES \_\_\_\_\_ NO \_\_\_\_\_  
If yes, list insurance subsidiaries: (Attach separate sheet, if necessary.)

HAS ANY ADMINISTRATIVE ACTION EVER BEEN TAKEN AGAINST YOU IN ANY OTHER STATE?  
YES \_\_\_\_\_ NO \_\_\_\_\_ If yes, please explain.

HAVE YOU EVER BEEN FINED IN ANY OTHER STATE? YES \_\_\_\_\_ NO \_\_\_\_\_  
If yes, please explain.

(continued)

Herewith submitted are the following documents:

- ( ) Current Annual Statement
- ( ) Current Quarterly Statement
- ( ) Certificate of Authority, Domiciliary State
- ( ) Completed Service of Process (SURLINES.SP)
- ( ) Descriptions of products to be sold in Montana and proposed marketing plan

DATED \_\_\_\_\_

\_\_\_\_\_  
(Name & Title of Officer)

\_\_\_\_\_  
(Signature of Officer)

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**ALIEN INSURER SURPLUS LINES ELIGIBILITY APPLICATION**

APPLICANT COMPANY'S NAME \_\_\_\_\_

HOME OFFICE ADDRESS \_\_\_\_\_  
(Street or PO Box)

\_\_\_\_\_  
(City) (State) (Zip)

MAILING ADDRESS \_\_\_\_\_  
(Street or PO Box)

\_\_\_\_\_  
(City ) (State) (Zip)

U.S. COUNSEL - Name/Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name and Phone Number of Contact Person \_\_\_\_\_

DATE INCORPORATED \_\_\_\_\_ COUNTRY OF DOMICILE \_\_\_\_\_

ARE YOU A SUBSIDIARY? YES \_\_\_\_\_ NO \_\_\_\_\_  
If yes, list ultimate parent company.

\_\_\_\_\_  
ARE YOU A PARENT COMPANY? YES \_\_\_\_\_ NO \_\_\_\_\_  
If yes, list insurance subsidiaries: (Attach separate sheet, if necessary.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

HAS ANY ADMINISTRATIVE ACTION EVER BEEN TAKEN AGAINST YOU IN ANY OTHER STATE?  
YES \_\_\_\_\_ NO \_\_\_\_\_ If yes, please explain.

\_\_\_\_\_  
\_\_\_\_\_

IS THE APPLICANT COMPANY LISTED ON THE NON-ADMITTED INSURER NAIC QUARTERLY  
LISTING? Yes \_\_\_\_\_ No \_\_\_\_\_

(continued)

Herewith submitted are the following documents:

- ( ) Current Annual Financial Statement
- ( ) Completed Service of Process (SURLINES.SP)
- ( ) Descriptions of products to be sold in Montana and proposed marketing plan

Dated \_\_\_\_\_

\_\_\_\_\_  
(Name & Title of U.S. Representative)

\_\_\_\_\_  
(Signature of Representative)

***APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE OF PROCESS***

\_\_\_\_\_  
(Name of Company), duly incorporated under the laws of the State of \_\_\_\_\_, engaging in 'surplus lines' underwriting in the State of Montana, pursuant to the provisions of Montana Law, appoints THE DULY ELECTED STATE AUDITOR AND COMMISSIONER OF INSURANCE OF THE STATE OF MONTANA as its true and lawful attorney to receive service of legal process in any action or proceeding against it in the State of Montana. The Company authorizes the Commissioner, or, in the Commissioner's absence, an employee of the Commissioner, to acknowledge service of legal process on behalf of the Company in this state. The Company waives all claim to or right of error by reason of acknowledgement of service. The Company does consent and agree that any lawful process against it that is served upon the Commissioner as appointed attorney shall have the same legal force and validity as if served upon the Company.

This appointment and authority is irrevocable and is to continue in force so long as any liability remains outstanding or pending in the State of Montana on account of any contract or certificate of insurance or indemnity issued by or through the said Company.

IN WITNESS WHEREOF, the said Company has to these presents affixed its corporate seal and caused the same to be subscribed and attested by its President and Secretary, or other chief executive officers at the City of \_\_\_\_\_, in the State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Name and address of the person to whom Service of Process is to be forwarded.

MSLAA  
APPROVED RISK LIST – EFFECTIVE 11/7/2001

**AL-AUTOMOBILE LIABILITY**

1. GARAGE LIABILITY – RECREATIONAL VEHICLE DEALERS
2. GARAGE LIABILITY – ENVIRONMENTAL IMPAIRMENT (SERVICE STATIONS/BULK PLANTS)
3. TAXI CABS / LIMOS
4. EMERGENCY VEHICLES
5. RESERVED FOR FUTURE USE
6. GARAGE LIABILITY – RECREATIONAL VEHICLE REPAIR / SERVICE (NON DEALER)

**AP – AUTOMOBILE PHYSICAL DAMAGE**

1. EMERGENCY VEHICLES
2. TAXI CABS / LIMOS
3. RECREATIONAL VEHICLE DEALERS
4. USED AUTOMOBILE DEALERS

**AV – AVIATION / AIRCRAFT LIABILITY AND HULL**

1. AIR AMBULANCE
2. EXPERIMENTAL
3. GLIDERS – COMMERCIAL
4. HOT AIR BALLOONS
5. SLUNG CARGO
6. HELICOPTER OPERATORS
7. AERIAL APPLICATORS
8. AERIAL TANKERS / WATER BOMBERS
9. EXCESS AVIATION LIABILITY

**FA – FIRE AND ALLIED LINES**

1. AMUSEMENT PARKS & DEVICES (NOT GAMBLING MACHINES)
2. CARNIVALS / EXHIBITIONS / CONCERTS
3. UNPROTECTED SEASONAL OPERATIONS
4. WOODWORKING PROPERTY (W/O A CENTRAL DUST COLLECTION SYSTEM)
5. BAR & TAVERN PROTECTION CLASS 9 & 10 ONLY (NO RESTAURANTS)
6. RESERVED FOR FUTURE USE
7. VACANT BUILDINGS
8. RESTAURANTS – WITHOUT AUTOMATIC FIRE SUPPRESSION SYSTEMS
9. SAWMILLS / FOREST PRODUCTS MANUFACTURING
10. PAWN SHOPS / SECOND-HAND STORES
11. WELDING (CLASSIFICATION CODE #6850 IN COMM'L LINES MANUAL)

**GL - GENERAL LIABILITY**

1. AMUSEMENT PARKS & DEVICES (NOT GAMBLING MACHINES)
2. MANUFACTURING / APPLICATION / TRANSPORTATION / STORAGE OF: ANHYDROUS AMMONIA / FERTILIZERS / HERBICIDES / PESTICIDES
3. CONTESTS: AVIATION / MOTOR VEHICLE / WATER CRAFT
4. BUILDING DEMOLITION AND/OR MOVING
5. CARNIVALS / EXHIBITIONS
6. UNSUPPORTED FARM LIABILITY
7. BLASTING CONTRACTORS
8. PRE-RELEASE CENTERS
9. SALVAGE YARDS
10. MOUNTAIN & ICE-CLIMBING (NOT INCLUDING ROCK CLIMBING)
11. RAILROAD LIABILITY / RAILROAD PROTECTIVE (MONOLINE)



## **GL – GENERAL LIABILITY (CON'T)**

12. MERCHANT POLICE
13. SKI AREA OPERATIONS, INCLUDING TOWS AND LIFTS
14. FIREWORKS DISPLAY (ONLY)
15. YOUTH GROUP HOMES
16. RECREATIONAL VEHICLE RENTAL
17. RESERVED FOR FUTURE USE
18. NURSING HOMES (CLASS B)
19. ATHLETIC CAMPS (SHORT TERM)
20. FIRE SUPPRESSION SYSTEMS / ALARM SYSTEMS – INSTALLATION AND SERVICE
21. OPEN DITCH OR CANAL LIABILITY
22. SHOOTING CLUBS AND SHOOTING RANGES
23. UNDERGROUND STORAGE TANK MANUFACTURING / REMOVAL
24. MONOLINE THIRD PARTY BROAD FORM PROPERTY DAMAGE
25. TREE TRIMMERS
26. VACANT BUILDINGS
27. WELDING (CLASSIFICATION CODE #99969 IN COMM'L LINES MANUAL)
28. TATOOING, SCARIFICATION, BODY PEIRCING

## **IM – INLAND MARINE**

1. BRIDGES
2. COLLECTIBLES DEALER (SPORTS CARDS, COINS, STAMPS, ETC.)
3. RESERVED FOR FUTURE USE
4. TUNNELING
5. CARGO FOR TAXI
6. CARGO – HOUSE MOVING (NOT MOBILE HOMES)
7. WELDING EQUIPMENT

## **MS – MISCELLANEOUS SPECIALTY LINES**

1. ASBESTOS AND/OR RADON ABATEMENT – ALL COVERAGES
2. EXPLOSIVE / AMMUNITION (GUN POWDER) MANUFACTURING OR SALES OR STORAGE
3. MINING – ALL COVERAGES
4. OIL & GAS (PRODUCTION / REFINING / EXPLORATION / SERVICE (NOT GAS STATIONS)
5. RESERVED FOR FUTURE USE
6. WORKERS' COMPENSATION (EXCESS)
7. RESERVED FOR FUTURE USE
8. RESERVED FOR FUTURE USE
9. MONOLINE LIQUOR LEGAL LIABILITY
10. ENVIRONMENTAL IMPAIRMENT – POLLUTION

## **PL – PROFESSIONAL LIABILITY**

1. MONOLINE AMBULANCE PERSONNEL / EMT
- 2 THROUGH 5. RESERVED FOR FUTURE USE
6. HEALING ARTS (i.e. NATUROPATHIC)
7. RESERVED FOR FUTURE USE
8. PSYCHOLOGIST / SOCIOLOGIST / COUNSELORS
9. RESERVED FOR FUTURE USE
10. DESIGN BUILDERS (CONTRACTORS ONLY)
11. RESERVED FOR FUTURE USE
12. PROPERTY MANAGEMENT (MONOLINE)
13. RESERVED FOR FUTURE USE
14. REAL ESTATE INSPECTORS
15. ENVIRONMENTAL CONSULTANTS
16. MEDICAL LABS / BLOOD LABS

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## Part 3

### Authorization of Surplus Line Insurers, Insurance Producers, and Insurance

#### Administrative Rules:

Title 6, chapter 6, subchapter 28, ARM Surplus lines insurance transactions.

**33-2-301. Short title -- purpose -- definitions.** (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

(2) This part must be applied to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state.

(3) As used in this part, the following definitions apply:

(a) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

(b) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines insurance producer may place surplus lines insurance under 33-2-307.

(c) "Export" means to place surplus lines insurance with an unauthorized insurer.

(d) "Producing insurance producer" means the individual insurance producer dealing directly with the person seeking insurance.

(e) "Surplus lines insurance" means any insurance on risks resident, located, or to be performed in this state permitted to be placed through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance. The term does not include the kinds of insurance exempted under 33-2-317.

(f) "Surplus lines insurance producer" means an individual, partnership, or corporation licensed under 33-2-305 to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.

(g) "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states.

**History:** En. Sec. 184, Ch. 286, L. 1959; R.C.M. 1947, 40-3409; amd. Sec. 1, Ch. 537, L. 1987; (3) En. Sec. 2, Ch. 537, L. 1987; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 8, Ch. 379, L. 1995.

#### Administrative Rules:

ARM 6.6.2808 Publication and distribution.

**33-2-302. Conditions precedent to sale of surplus lines insurance.** A producing insurance producer may request a surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of insurance with an unauthorized insurer if:

(1) the insurer is an eligible surplus lines insurer;

(2) the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers or, in the case of a renewal, the line of insurance has not become available from an authorized insurer;

(3) the producing insurance producer makes a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

(4) the insurance is not procured for the purpose of securing:

(a) a lower premium rate than would be accepted by an authorized insurer; or

(b) an advantage in terms of the insurance contract; and

(5) all other requirements of this part are met.

**History:** En. Secs. 185, 186, Ch. 286, L. 1959; R.C.M. 1947, 40-3410, 40-3411; amd. Sec. 1, Ch. 112, L. 1979; amd. Sec. 3, Ch. 537, L. 1987; amd. Sec. 1, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 3, Ch. 451, L. 1993; amd. Sec. 9, Ch. 379, L. 1995.

**33-2-303. Filing and endorsement of contract.** Each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance under this part must be filed with the commissioner, or with the surplus lines advisory organization formed pursuant to 33-2-321, and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law, under surplus lines insurance producer license No. ...." and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent". The surplus lines producer shall properly fill in and sign the endorsement.

History: En. Sec. 187, Ch. 286, L. 1959; R.C.M. 1947, 40-3412; amd. Sec. 4, Ch. 537, L. 1987; amd. Sec. 2, Ch. 285, L. 1989; amd. Sec. 9, Ch. 713, L. 1989.

**33-2-304. Surplus lines insurance valid.** Insurance contracts procured as surplus lines insurance from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties and shall be given acceptance and recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

History: En. Sec. 188, Ch. 286, L. 1959; R.C.M. 1947, 40-3413; amd. Sec. 5, Ch. 537, L. 1987.

**33-2-305. Licensing of surplus lines insurance producer -- fee and bond.** (1) A person may not place a contract of surplus lines insurance with an unauthorized insurer unless the person is licensed as a property and casualty insurance producer and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner;

(c) been licensed as a property and casualty insurance producer continuously for 5 years or more; and

(d) filed with the commissioner and, for as long as the license remains in effect, kept in force a bond in favor of the state of Montana in the amount of \$10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice of termination.

(3) The license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before March 1 shall pay a fine of \$100 before the commissioner renews the license.

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance.

(5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license.

History: En. Sec. 189, Ch. 286, L. 1959; R.C.M. 1947, 40-3414; amd. Sec. 6, Ch. 537, L. 1987; amd. Sec. 3, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 1, Ch. 180, L. 1991; amd. Sec. 4, Ch. 451, L. 1993; amd. Sec. 10, Ch. 379, L. 1995.

**33-2-306. Surplus lines insurance producer's authority under license -- acceptance of business from other insurance producers.** (1) Under a surplus lines insurance producer license the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.

(2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual, partnership, or corporation that has not been appointed as an insurance producer in this state and may compensate him therefor.

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered.

History: En. Sec. 190, Ch. 286, L. 1959; R.C.M. 1947, 40-3415; amd. Sec. 7, Ch. 537, L. 1987; amd. Sec. 4, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 2, Ch. 180, L. 1991.

**33-2-307. Requirements for eligible surplus lines insurers.** (1) A surplus lines insurance producer may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) \$10 million. An insurer possessing less than \$10 million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon factors of the quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$7 million.

(ii) in the case of Lloyd's or another similar group including incorporated and unincorporated alien insurers, the insurer maintains a trust fund of not less than \$50 million as security to the full amount of capital and surplus for all policyholders and creditors in the United States of each member of the group. The incorporated members of the group may not engage in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the groups of domiciliary regulators as are the unincorporated members. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than \$15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than \$1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than \$1.5 million, for the protection of all its policyholders in the United States and the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer not more than 6 months after the close of the period reported upon, or quarterly if considered necessary by the commissioner, and that is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(i) is in unsound financial condition;

(ii) is no longer eligible under subsections (1) through (3);

(iii) has willfully violated the laws of this state; or

(iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance producer.

(5) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders.

History: En. Sec. 191, Ch. 286, L. 1959; R.C.M. 1947, 40-3416; amd. Sec. 6, Ch. 303, L. 1981; amd. Sec. 8, Ch. 537, L. 1987; (4) En. Sec. 9, Ch. 537, L. 1987; amd. Sec. 2, Ch. 713, L. 1989; amd. Sec. 5, Ch. 451, L. 1993; amd. Sec. 11, Ch. 379, L. 1995; amd. Sec. 3, Ch. 531, L. 1997; amd. Sec. 22, Ch. 227, L. 2001.

**33-2-308. Evidence of insurance -- changes -- penalty.** (1) Upon placing surplus lines insurance, the surplus lines insurance producer shall promptly issue or deliver to the insured or the producing insurance producer evidence of the insurance, consisting either of the policy as issued by the insurer or, if the policy is not then available, a cover note or certificate of insurance signed or countersigned by the insurance producer. The cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If a direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each insurer.

(2) If after the issuance and delivery of any cover note or certificate there is a change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the surplus lines insurance producer shall promptly issue or deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible under the coverage.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines insurance producer has issued and delivered a cover note or certificate as provided in subsection (2), upon request therefor by the insured, the surplus lines insurance producer shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the cover note or certificate previously issued.

(4) A surplus lines insurance producer who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of a material change with respect to the insurance by delivery to the insured of a substitute cover note or certificate as provided in subsection (2) is guilty of a violation of this code and upon conviction is subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

(5) A surplus lines insurance producer may not issue or deliver an evidence of insurance or purport to insure or represent that insurance will be or has been written by an eligible surplus lines insurer unless he has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that the insurance has been granted.

History: En. Sec. 192, Ch. 286, L. 1959; R.C.M. 1947, 40-3417; amd. Sec. 11, Ch. 537, L. 1987; amd. Sec. 5, Ch. 285, L. 1989; amd. Sec. 10, Ch. 713, L. 1989.

**33-2-309. Liability of insurer as to losses and unearned premiums.** (1) As to a surplus lines risk that has been assumed by an unauthorized insurer pursuant to The Surplus Lines Insurance Law and if the premium on the surplus lines risk has been received by the surplus lines insurance producer who placed the insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer is considered to have received the premium due to it for the coverage. The insurer is liable to the insured as to losses covered by the insurance and for unearned premiums that may become payable to the insured upon cancellation of the insurance, whether or not in fact the surplus lines insurance producer is indebted to the insurer with respect to the insurance or for any other cause. This provision does not affect rights as between the insurer and the surplus lines insurance producer.

(2) A payment of premium to a surplus lines insurance producer acting for a person other than himself in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.

(3) Each unauthorized insurer assuming a surplus lines direct risk under The Surplus Lines Insurance Law is considered to have subjected itself to the terms of this section.

History: En. Sec. 193, Ch. 286, L. 1959; R.C.M. 1947, 40-3418; amd. Sec. 12, Ch. 537, L. 1987; amd. Sec. 6, Ch. 285, L. 1989; amd. Sec. 11, Ch. 713, L. 1989.

**33-2-310. Records and annual statement -- affidavit.** (1) Each surplus lines insurance producer shall keep a separate record and account of all business transacted under his license, including a copy of each daily report, if any, or of each policy, certificate of insurance, cover note, or other evidence of insurance issued or delivered by him. The records must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the surplus lines insurance to which it relates.

(2) Prior to April 1 of each year the surplus lines insurance producer shall file with the commissioner a statement for the preceding calendar year, showing:

- (a) name and address of each insured for whom surplus lines insurance was procured;
- (b) name and home office address of each insurer providing the surplus lines insurance;

(c) amount of each surplus lines insurance policy, the premium rate, and the gross premium charged for the policy;

(d) date and term of the policy;

(e) amount of premium returned on each policy canceled or not taken;

(f) amount of tax and other sums to be collected from the insured;

(g) identity of the producing insurance producer; and

(h) such additional information as the commissioner may reasonably require.

(3) Each producing insurance producer shall execute and each surplus lines insurance producer shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of such efforts. An affidavit filed under this subsection is subject to public inspection unless the commissioner determines that the public interest requires otherwise. The producing insurance producer shall state in the affidavit that he has expressly advised the insured prior to placing the insurance that:

(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage.

History: En. Sec. 194, Ch. 286, L. 1959; R.C.M. 1947, 40-3419; amd. Sec. 13, Ch. 537, L. 1987; amd. Sec. 7, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989.

**33-2-311. Tax on surplus lines.** There is imposed upon premiums collected for surplus lines insurance transacted in this state a tax at the same rate and computed in the same manner as provided in 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, are not considered to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus lines insurance producer shall pay to the commissioner the amount of tax owing as to surplus lines insurance business transacted by him during the preceding calendar year. If a surplus lines insurance policy covers risks or exposures only partially in this state, the tax payable must be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

History: En. Sec. 195, Ch. 286, L. 1959; R.C.M. 1947, 40-3420; amd. Sec. 2, Ch. 664, L. 1979; amd. Sec. 14, Ch. 537, L. 1987; amd. Sec. 2, Ch. 622, L. 1987; amd. Sec. 2, Ch. 713, L. 1989.

**33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee.** (1) A surplus lines insurance producer who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable to a penalty of \$25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing the commissioner. The penalty when collected, unless collected by a justice's court, must be paid to the state treasurer and placed to the credit of the general fund. The surplus lines insurance producer license is also subject to revocation as provided in 33-2-313.

(2) If a surplus lines insurance producer does not pay the stamping fee provided for in 33-2-321, the commissioner or the surplus lines advisory organization formed pursuant to 33-2-321 may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid.

History: En. Sec. 196, Ch. 286, L. 1959; R.C.M. 1947, 40-3421; amd. Sec. 15, Ch. 537, L. 1987; amd. Sec. 20, Ch. 557, L. 1987; amd. Sec. 8, Ch. 285, L. 1989; amd. Sec. 2, Ch. 713, L. 1989; amd. Sec. 6, Ch. 451, L. 1993.

**33-2-313. Revocation or suspension of producer license.** (1) The commissioner shall revoke or suspend any surplus lines insurance producer license, together with any license as an insurance producer:

(a) if the insurance producer fails to file an annual statement or to remit the tax as required by law;

(b) if the insurance producer fails to keep the records or to allow the commissioner to examine the records, as required by law;

(c) if the insurance producer falsifies the affidavit required by 33-2-310(3);

(d) if the insurance producer closes the surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

(e) if the insurance producer violates any provision of this part; or

(f) for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension, revocation, or refusal to license or renew a license or for imposing a fine on an insurance producer or applicant apply to the suspension, revocation, or refusal to license or renew a license or to imposing a fine on a surplus lines insurance producer or applicant.

(3) An insurance producer whose license has been revoked or suspended may not again be licensed within 1 year after revocation or suspension or until the insurance producer pays all penalties and delinquent taxes that are owed.

History: En. Sec. 197, Ch. 286, L. 1959; R.C.M. 1947, 40-3422; amd. Sec. 16, Ch. 537, L. 1987; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 7, Ch. 451, L. 1993; amd. Sec. 23, Ch. 227, L. 2001.

**33-2-314. Actions against insurer -- venue.** Every unauthorized insurer issuing a surplus lines insurance policy under this part is considered to be doing business in this state as an unauthorized insurer and may be sued in this state upon any cause of action arising under any insurance contract so made by it. Such suit must be brought in the district court of the county wherein the plaintiff resides.

History: En. Sec. 198, Ch. 286, L. 1959; R.C.M. 1947, 40-3423; amd. Sec. 17, Ch. 537, L. 1987.

**33-2-315. Commissioner appointed process agent -- service of process.** (1) Every surplus lines insurer before transacting surplus lines insurance under this part shall in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served and in such writing shall agree that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment, the insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

(2) Service upon such an insurer must be made upon the commissioner and in accordance with the procedures, requirements, and results as provided under 33-1-603.

History: En. Sec. 199, Ch. 286, L. 1959; R.C.M. 1947, 40-3424; amd. Sec. 18, Ch. 537, L. 1987.

**33-2-316. Rules.** The commissioner shall make reasonable rules, consistent with this part, for any of the following purposes:

(1) effectuation of The Surplus Lines Insurance Law;

(2) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers; and

(3) establishment, procedures, and operations of the surplus lines advisory organization formed pursuant to 33-2-321 or others designed to assist a surplus lines insurance producer to comply with The Surplus Lines Insurance Law.

History: En. Sec. 200, Ch. 286, L. 1959; R.C.M. 1947, 40-3425; amd. Sec. 20, Ch. 537, L. 1987; amd. Sec. 9, Ch. 285, L. 1989; amd. Sec. 12, Ch. 713, L. 1989; amd. Sec. 24, Ch. 227, L. 2001.

**Administrative Rules:**

Title 6, chapter 6, subchapter 28, ARM Surplus lines insurance transactions.

**33-2-317. Exemptions.** The Surplus Lines Insurance Law does not apply to reinsurance or to the following kinds of insurance when placed by a licensed insurance producer of this state:

(1) wet marine insurance;

(2) insurance on subjects located, residing, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of the aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft.

History: En. Sec. 201, Ch. 286, L. 1959; R.C.M. 1947, 40-3426; amd. Sec. 21, Ch. 537, L. 1987; amd. Sec. 10, Ch. 285, L. 1989; amd. Sec. 13, Ch. 713, L. 1989; amd. Sec. 4, Ch. 531, L. 1997.

**33-2-318 through 33-2-320 reserved.**

**33-2-321. Surplus lines advisory organizations -- examination by commissioner -- stamping fee.** (1) A surplus lines advisory organization of surplus lines insurance producers may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;

(b) provide means for the confidential examination of all surplus lines insurance written by its members to determine whether the surplus lines insurance complies with this part;

(c) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines insurance market; and

(d) receive and disseminate to its members information relative to surplus lines insurance.

(2) The surplus lines advisory organization shall file with the commissioner:

(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;

(b) a copy of its bylaws, rules, and regulations governing its activities;

(c) a current list of its members;

(d) the name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at the commissioner's direction may be served; and

(e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).

(3) The commissioner may make or cause to be made an examination of the surplus lines advisory organization. The surplus lines advisory organization shall pay the reasonable cost of an examination upon presentation to it by the commissioner of a detailed account of the cost. The officers, managers, insurance producers, and employees of the surplus lines advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two copies of the examination report to the examined surplus lines advisory organization and shall notify the surplus lines advisory organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the surplus lines advisory organization or any of its members to be in violation of this part, the commissioner may issue an order requiring the discontinuance of the violation.

(4) The commissioner may by order compel a surplus lines insurance producer to join the surplus lines advisory organization as a condition of continued licensure under this part.

(5) (a) If a surplus lines advisory organization is performing functions as provided in subsection (1), it may collect a stamping fee not to exceed 1% of the premium payable for surplus lines insurance transacted by its members in this state. The commissioner shall establish the stamping fee by rule. The surplus lines advisory organization shall use the stamping fees it collects to pay its expenses in connection with performing the functions set forth in subsection (1).

(b) If a surplus lines advisory organization is not operating as set forth in this section, the stamping fee may be collected by the commissioner and placed in a state special revenue account for the expenses of regulating surplus lines.

**History:** En. Sec. 10, Ch. 537, L. 1987; amd. Sec. 11, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 1, Ch. 184, L. 2001.

### **33-2-322 through 33-2-325 reserved.**

**33-2-326. Penalties.** A surplus lines insurance producer who in this state represents or aids an unauthorized insurer in violation of this part is guilty of a misdemeanor and shall be fined not more than \$1,000 or be imprisoned in the county jail for a term no longer than 6 months, or both.

**History:** En. Sec. 19, Ch. 537, L. 1987; amd. Sec. 2, Ch. 713, L. 1989.

Administrative Rules:

ARM 6.6.2808 Publication and distribution.